

## Department of Defense

216.405-1

Prices Controlled by a Foreign Government, may be used in fixed-price supply and service contracts when—

(i) The contract is to be performed wholly or in part in a foreign country; and

(ii) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(2) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

[56 FR 36340, July 31, 1991, as amended at 62 FR 34122, June 24, 1997; 62 FR 40472, July 29, 1997]

### Subpart 216.3—Cost-Reimbursement Contracts

#### **216.306 Cost-plus-fixed-fee contracts.**

(c) *Limitations.*

(i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act;

(B) Are estimated to exceed \$25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply—

(A) To contracts for environmental restoration at an installation that is being closed or realigned where payments are made from a Base Realignment and Closure Account; or

(B) To contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(1) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(2) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or

are for environmental work classified as construction.

[62 FR 1058, Jan. 8, 1997; 62 FR 1817, Jan. 13, 1997; 62 FR 49305, Sept. 19, 1997]

### Subpart 216.4—Incentive Contracts

#### **216.402 Application of predetermined, formula-type incentives.**

##### **216.402-2 Technical performance incentives.**

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

##### **216.403 Fixed-price incentive contracts.**

(b) *Application.*

(3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

##### **216.403-2 Fixed-price incentive (successive targets) contracts.**

(a) *Description.* (1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

##### **216.404 Fixed-price contracts with award fees.**

Award-fee provisions may be used in fixed-price contracts as provided in 216.470

[63 FR 11529, Mar. 9, 1998]

##### **216.405 Cost-reimbursement incentive contracts.**

##### **216.405-1 Cost-plus-incentive-fee contracts.**

(b) *Application.*

(3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—